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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/674,188

09/29/2003

David A. Selby

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09/09/2008

(SAUL-END) PATENT DOCKETING CLERK
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EXAMINER

LASTRA, DANIEL

ART UNIT

PAPER NUMBER

3688

MAIL DATE

DELIVERY MODE

09/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/674,188	Applicant(s) SELBY, DAVID A.	
	Examiner DANIEL LASTRA	Art Unit 3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-22 have been examined. Application 10/674,188 (INCENTIVE-BASED WEBSITE ARCHITECTURE) has a filing date 09/29/2003.

Response to Amendment

2. In response to Non Final Rejection filed 02/08/2008, the Applicant filed an Amendment on 07/08/2008, which amended claims 1, 5, 8, 9, 13, 16 and 20.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here the claims fail to meet the above requirements because the steps are neither tied to another statutory class of invention (such as a particular apparatus).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Niu (US 2002/0062245).

Claims 1, 9 and 16, Niu teaches:

A method of influencing the actions of users of an interactive content- delivery system, comprising the steps of:

identifying probabilities of selection with respect to *all* selections offered by said interactive content-delivery system (see paragraphs 77-81, 89);

and

presenting users of said interactive content-delivery system with incentives based upon said *probabilities* (see paragraphs 77-82; 89, 97,115).

Claims 2, 10 and 17, Niu teaches:

wherein said identifying step includes at least the step of: estimating probabilities of selection for each possible selection offered by said interactive content delivery system if historical user data for said interactive content delivery system is unavailable (see paragraph 41).

Claims 3, 11 and 18, Niu teaches:

wherein said identifying step further comprises at least the step of analyzing historical user data for said interactive content delivery system to identify probability of selection based on said historical user data (see paragraph 42).

Claims 4, 12 and 19, Niu teaches:

wherein said step of analyzing historical user data comprises at least the step of performing historical analysis of paths taken by users who have not been presented with incentives (see paragraph 43).

Claims 5, 13 and 20, Niu teaches:

wherein said step of analyzing historical user data is continually updated with new historical user data obtained after users of said interactive content-delivery system have been presented with incentives (see paragraph 49).

Claims 6, 14 and 21, Niu teaches:

wherein said incentives are selected based on gaming theory and include both positive and negative incentives (see paragraph 115 “offering a searcher a discount as an incentive to buy and don’t offer a buyer a discount as said buyer does not need an additional incentive to buy”)

Claims 7, 15 and 22, Niu teaches:

wherein said interactive content-delivery system comprises a web-based e-commerce site (see paragraph 41).

Claim 8, Niu teaches:

A method of managing website visitors, comprising the steps of:

receiving a content selection from a website user (see paragraph 41);

analyzing said content selection and determining probabilities associated with the selection of all sub-choices presented to said user based on said content selection (see paragraphs 41, 97);

presenting incentives associated with each sub-choice based upon said probabilities (see paragraph 89); and

repeating the above steps until a desired end choice has been selected (see paragraph 115 “don’t offer a buyer an incentive as said buyer does not need an incentive to buy”).

Response to Arguments

5. Applicant's arguments filed 07/08/2008 have been fully considered but they are not persuasive. The Applicant argues that Niu does not teach identifying the probabilities of selection with respect to all selections offered by the interactive content delivery system and presenting users of the interactive content delivery system with incentives based upon the probabilities. The Applicant argues that nothing in Niu there is going through each selection possibility of an interactive content delivery system (i.e. each pathway available on a website), identifying the probabilities of selection of each selection possibility and then presenting incentives to users base on the identified probabilities. The Examiner answers that Nui calculates the probabilities of an user navigating different path in a website, such during a user visits to a website, where the home page of said website provides menu selections of content related information (e.g. product, description) about the various goods and services offered for sale by ecommerce website owner and where the user click stream data (i.e. navigating path) is

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ties to a probability and where a promotion is tied to said probability in order to target promotion to said user based upon said probability (see paragraph 43, 69, 89). Therefore, contrary to Applicant's argument, Nui teaches Applicant's claimed invention.

The Applicant argues that Nui does not teach "negative incentive" because Nui does not teach offering a particular incentive and advising the user that failure to accept the incentive within a particular time frame will result in it being taken away or reduced. The Examiner answers that the Applicant is arguing about a limitation not stated in the claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Nui teaches in paragraph 115 "offering a searcher a discount as an incentive to buy (i.e. positive incentive) and don't offer a buyer a discount as said buyer does not need an additional incentive to buy (i.e. negative incentive), or offering a "cross sell" incentive (i.e. positive incentive) or a upsell incentive (i.e. negative incentive (see paragraph 49).

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James W. Myhre can be reached on (571)272-6722. The official Fax number is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/

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September 5, 2008